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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JEFFREY TALAMANTES,

12 Plaintiff,

13 vs.

14 MERCED COUNTY JAIL, et al.,

15 Defendants.
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1:20-cv-01643-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF BE DENIED
(ECF No. 8.)**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS**

22 **I. BACKGROUND**

23 Jeffrey Talamantes ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis* in
24 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing
25 this action on November 18, 2020. (ECF No. 1.) The Complaint awaits the court's requisite
26 screening under 28 U.S.C. § 1915.

27 On April 26, 2021, Plaintiff filed a request for the court to compel staff at Merced County
28 Jail to provide him with copies of all of the grievances he submitted. Plaintiff also reports that

1 he has been retaliated against by staff at Merced County Jail causing him to serve more time and
2 to be classified as a violent offender.¹

3 To the extent that Plaintiff seeks a court order compelling jail officers or staff to act on
4 his behalf or to refrain from retaliating against him, the court construes Plaintiff's request as a
5 motion for preliminary injunctive relief.

6 **II. PRELIMINARY INJUNCTIVE RELIEF**

7 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
8 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
9 the balance of equities tips in his favor, and that an injunction is in the public interest." Winter
10 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citations omitted). An injunction may
11 only be awarded upon a *clear showing* that the plaintiff is entitled to relief. Id. at 22 (citation
12 omitted) (emphasis added).

13 Federal courts are courts of limited jurisdiction and in considering a request for
14 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter,
15 it have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102,
16 103 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of
17 Church and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982). If the Court does not
18 have an actual case or controversy before it, it has no power to hear the matter in question. Id.

19 **III. ANALYSIS**

20 To the extent that Plaintiff seeks a court order compelling officers or staff at Merced
21 County Jail to act on his behalf or refrain from retaliating against him, the court lacks jurisdiction
22 to issue such an order because the order would not remedy any of the claims upon which this
23 case proceeds. This case was filed against defendants employed at the Merced County Jail based
24 on events occurring before November 18, 2020 at the Merced County Jail in Merced, California.
25 Plaintiff now requests a court order protecting him from present and future actions by officers at

26 ¹ Any relief affecting Plaintiff's conviction or sentence is not available in this § 1983
27 action. It has long been established that state prisoners cannot challenge the fact or duration of their
28 confinement in a section 1983 action and their sole remedy lies in habeas corpus relief. Wilkinson v.
Dotson, 544 U.S. 74, 78 (2005).

1 the Merced County Jail. Because such an order would not remedy any of the claims in this case,
2 which are based upon events occurring before November 18, 2020, the court lacks jurisdiction
3 to issue the order sought by Plaintiff, and Plaintiff's motion must be denied.

4 Furthermore, no defendants have yet appeared in this action, hence the court does not
5 have jurisdiction to order injunctive relief which would require directing individuals not before
6 the Court to take action. Zepeda v. United States Immigration & Naturalization Serv., 753 F.2d
7 719, 727 (9th Cir. 1985) ("A federal court may issue an injunction if it has personal jurisdiction
8 over the parties and subject matter jurisdiction over the claim; it may not attempt to determine
9 the rights of persons not before the court.").

10 Moreover, Plaintiff's motion for preliminary injunctive relief against officials at Merced
11 County Jail should be denied as moot because Plaintiff is no longer in custody there.² When
12 Plaintiff filed this case he was incarcerated at the Merced County Jail. Plaintiff is currently
13 incarcerated at Corcoran State Prison. Where a prisoner is challenging conditions of confinement
14 and is seeking injunctive relief, transfer to another prison renders the request for injunctive relief
15 moot absent some evidence of an expectation of being transferred back. See Preiser v. Newkirk,
16 422 U.S. 395, 402-03 (1975); Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam);
17 see also Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007). Here, there is no
18 evidence that Plaintiff expects to be transferred back to the Merced County Jail. Therefore,
19 Plaintiff's motion should be denied as moot.

20 **IV. CONCLUSION AND RECOMMENDATIONS**

21 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that Plaintiff's motion for
22 preliminary injunctive relief, filed on April 26, 2021, be DENIED.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
25 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
26 written objections with the court. Such a document should be captioned "Objections to
27 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file

28 ² On April 1, 2021, Plaintiff filed a notice of change of his address to Corcoran State Prison in Corcoran,
California. (ECF No. 7.)

1 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
2 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
3 (9th Cir. 1991)).

4 IT IS SO ORDERED.

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6 Dated: April 28, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE